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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,641	08/18/2003	Mark Munch	COOL-00901	4440
7590 09/16/2005			EXAMINER	
Thomas B. Haverstock HAVERSTOCK & OWENS LLP 162 North Wolfe Road Sunnyvale, CA 94086			JIANG, CHEN WEN	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.		Applicant(s)	
	10/643,641		MUNCH ET AL.	
	Examiner		Art Unit	
	Chen-Wen Jiang		3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-132 is/are pending in the application.
- 4a) Of the above claim(s) 14-24, 36-46, 58-69 and 71-132 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 25-35, 47-57 and 70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/4, 7/28, 8/2, 8/9</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 1-13,25-35,47-57 and 70 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The amended claims do not read on Applicant's election of Species X (Fig.10). The amended limitations have not been disclosed in Fig.10.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-13,25-35,47-57 and 70 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. In case Applicant disagree with the above reasons. The previous Office Action still valid since Oberholzer et al. disclose the system same as Applicant elected Fig.10.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2,4-13,25,26,28-35,47,48,50-57 and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by Oberholzer et al. (U.S. Patent Number 6,119,729).

Oberholzer et al. disclose a freeze protection apparatus. Referring to Figs.1 and 1a, a freeze-protected conduit 10 comprises an elongated conduit 12 for conveying or containing

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liquid, and an elongated, compressible elastomeric material 14 disposed within the conduit 12. Examples of compressible elastomeric material 14 include foam, rubber, foamed neoprene and silicone sponge rubber. **Preferably**, the compressible elastomeric material 14 is fully sealed on all its sides and ends by a liquid impermeable membrane 18 to form an insert 20 which is disposed inside of conduit 12. A choice for membrane material is a thin metal foil coated with a protective layer such as a plastic film. Another preferred choice is a thin, flexible, plastic membrane materials include polyester and fluoropolymers. Referring to Figs.6 and 7, heat exchanger 50 has supply header 68 (inlet chamber), discharge header 72 (outlet chamber) and collectors 56. Every fluid system in solar collector 50 may be adapted for use with the freeze protection apparatus of the apparatus. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3,27 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oberholzer et al. (U.S. Patent Number 6,119,729).

The reference discloses the compression calculation claimed except for the 5 to 25 percent of the amount of fluid expansion. It is not patentable, however, to discover the optimum of workable ranges of the expansion by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), MPEP Section 2144.05(IIA).

7. Claims 3,27 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oberholzer et al. (U.S. Patent Number 6,119,729) in view of Mihara (JP 10099592 with machine English translation).

The reference discloses the compression calculation claimed except for the 5 to 25 percent of the amount of fluid expansion. Mihara disclose a method and apparatus to prevent a pump from being damaged due to the freezing of water by incorporating a freely compressible body in a chamber of the pump. The freely compressible hollow part 32 is incorporated into the pump chamber 1 absorbs the expansion in volume of ice to eliminate the pressure on the inner wall of the pump. The hollow part 32 is formed by foam which can be contracted freely. The ratio of the hollow part 32 volume to the pump chamber volume is made about 10% or more. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Oberholzer et al. with an expansion in view of Mihara so as to absorption of fluid expansion between 5-25%.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (571) 272-4809. The examiner can normally be reached on Monday-Thursday from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang
Primary Examiner

